

APPEAL NO. 021598
FILED ON JULY 31, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 30, 2002. With respect to the issues before her, the hearing officer determined that the appellant's (claimant) compensable injury extends to and includes a frozen right shoulder, mild winging of the right posterior scapular bone, bursitis of the right infraspinatus and subacromial bursa, degenerative changes of the acromioclavicular joint, crepitation of the right shoulder, and depression; that the compensable injury does not extend to or include impingement of the right shoulder, right shoulder degenerative joint disease, right rotator cuff tendon tear, right shoulder tendonitis, reflex sympathetic dystrophy, headaches, cervical degenerative disc disease, C6-7 posterior bulge of the annulus fibrosis, lumbar sprain/strain, or thoracic sprain/strain; and that the claimant is not entitled to supplemental income benefits (SIBs) for the fourth quarter. In his appeal, the claimant asserts that the hearing officer erred in determining the extent of his compensable injury and in determining that he is not entitled to SIBs for the fourth quarter. In its response to the claimant's appeal, the respondent (carrier) urges affirmance. The carrier did not appeal the determination that the claimant's compensable injury extends to and includes a frozen right shoulder, mild winging of the right posterior scapular bone, bursitis of the right infraspinatus and subacromial bursa, degenerative changes of the acromioclavicular joint, crepitation of the right shoulder, and depression and that determination has, therefore, become final pursuant to Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the compensable injury of _____, does not extend to or include impingement of the right shoulder, right shoulder degenerative joint disease, right rotator cuff tendon tear, right shoulder tendonitis, reflex sympathetic dystrophy, headaches, cervical degenerative disc disease, C6-7 posterior bulge of the annulus fibrosis, lumbar sprain/strain, or thoracic sprain/strain. That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence on the question of whether the claimed injuries and conditions were part of the compensable injury. The hearing officer resolved those conflicts and inconsistencies against the claimant and determined that he had not sustained his burden of proving that the compensable injury extended to those injuries and conditions. Nothing in our review of the record reveals that the hearing officer's determination in that regard is so against the great weight and

preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the challenged determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer also did not err in determining that the claimant did not satisfy the good faith requirement in the qualifying period for the fourth quarter of SIBs either by demonstrating that he had no ability to work or by demonstrating that he conducted a good faith job search. The hearing officer was not persuaded that the evidence presented by the claimant was sufficient to satisfy the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)). Nothing in our review of the hearing officer's determination in that regard reveals that it is so against the great weight as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to disturb that determination on appeal. Cain, *supra*. We likewise find no error in the hearing officer's determination that the claimant did not satisfy the requirement of conducting a good faith job search. As the hearing officer noted, the claimant did not document a job search in each week of the qualifying period. Thus, in accordance with the express language of Rule 130.102(e), his job search cannot rise to the level of a good faith search. Given our affirmance of the hearing officer's determination that the claimant did not satisfy the good faith requirement under either Rule 130.102(d)(4) or 130.102(e), we likewise affirm the determination that the claimant is not entitled to SIBs for the fourth quarter.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LEGION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge